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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,465	08/20/2003	Henry Marshall Israel	2550-001	5945
27123	7590	11/16/2007		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
			EXAMINER	
			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	
			NOTIFICATION DATE	DELIVERY MODE
			11/16/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com
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Office Action Summary

Application No.

10/644,465

Applicant(s)

ISRAEL ET AL.

Examiner

Michael Thaler

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-72 is/are pending in the application.
- 4a) Of the above claim(s) 43 and 50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42, 44-49 and 51-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>APPENDIX A AND B</u> . |

Claims 43 and 50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on Nov. 6, 2006.

Claims 49, 51-56 and 66-72 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The scope of claim 49 is unclear. Specifically, the text in lines 1-2 indicates that the adjacent vertical meander patterns are part of the environment in which the flexible connector is intended to be used are thus are not claimed (noting the phrase "for connecting loops of adjacent vertical meander patterns" in lines 1-2). However, the text in lines 5-6 implies that the adjacent vertical meander patterns are part of the claimed combination (noting the phrase "points of attachment of the member to the adjacent vertical meander patterns" in lines 5-6 which implies that the adjacent vertical meander patterns are attached to the member and thus are part of the claimed combination). As to claims 52 and 66, the ordinary meaning of "even" and "odd" (when these words are used together) is that even" refers to a number that is divisible by two while odd refers to a number that is

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not divisible by two. However, this meaning is inconsistent with the claims. It is not clear what applicant intends to mean by these terms.

Claims 42, 44-49, 51, 57-60, 63-69 and 72 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pinchasik et al. (5,449,373). As to claim 42, Pinchasik et al., in figures 3A-3C, disclose a plurality of continuous serpentine sections (as shown in the attached appendix A), a plurality of flexible connectors 124 forming a generally uniformly sized cell structure (as shown in appendix A), each of the connectors being elongatable in a bend of a lumen to maintain a generally uniformly sized cell structure in the bend after expansion (the above identified cells will inherently still be generally uniformly sized in the bend since any difference between the cell sizes will be relatively small, particularly in a small bend. Alternatively, it would have been obvious that the cells will still be generally uniformly sized in the bend when the bend is small since any effect the bend would have on the cell size would be small due to the smallness of the bend. As to claim 46, the top end of the Pinchasik et al. connectors are open, closed, open and closed along the longitudinal axis of the stent from the left to the right as seen in figures 3A-3C. As

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to claim 57, Pinchasik et al., in figures 3A-3C, disclose first meander patterns and second meander patterns as shown in the attached appendixes A and B.

Claims 52-56, 61, 62, 70 and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinchasik et al. (5,449,373). As to claims 52-56, Pinchasik et al. fail to disclose the loops 128 of the second meander pattern as having a smaller width (claim 52) or being more flexible than the loops of the first meander pattern (claim 56). However, it is old and well known in this art to reduce the width of a hinged area of a stent where bending is desired in order to obtain the advantage of facilitating such bending. It would have been obvious to reduce the width of the hinged area (loops 128) of the Pinchasik et al. stent so that it too would have this advantage. As to claims 61, 62, 70 and 71, Pinchasik et al. fail to disclose medicine on the stent. However, it is old and well known in this art to include medicine coatings on stents in order to obtain the advantage of facilitating the directing of the medicine directly to the target site. It would have been obvious to include a medicine coatings on the Pinchasik et al. stent so that it too would have this advantage. The above well known in the art statements are taken to be admitted prior art

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because applicant failed to traverse the examiner's assertions (M.P.E.P. 2144.03).

Applicant's arguments filed June 25, 2007 have been fully considered but they are not persuasive. As to the rejection under 35 U.S.C. 112, second paragraph, it is not clear exactly what applicant intends to mean by the terms "odd" and "even". No special definition is present in the specification which contradicts the normal meaning of these terms. As to the claimed serpentine sections, Pinchasik et al. disclose these sections as shown in Appendix A. The term "discrete" is not present in the claims. The term "generally" before the term "uniformly" in claim 42, line 8, for example, broadens the claim in the sense that perfect and total uniformity is not required. Certainly, when the Pinchasik et al. stent is bent only slightly, a change (if any) in the relative size of the cell structures would be slight. As to claim 52, one of ordinary skill in the art would realize that a reduction in the width of a portion of a connector would not result in failure during bending when the reduction in width is small as is done and known in the art.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht


MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731

APPENDIX A

U.S. Patent

Sep. 12, 1995

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5,449,373

FIG.3A

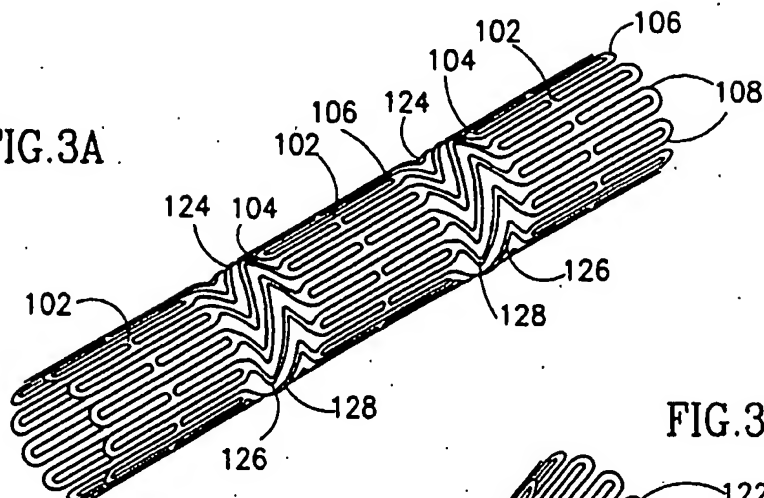


FIG.3B

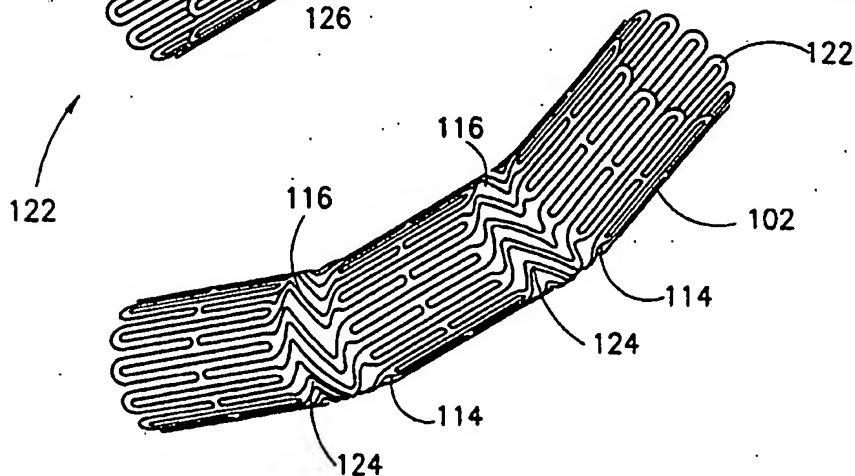
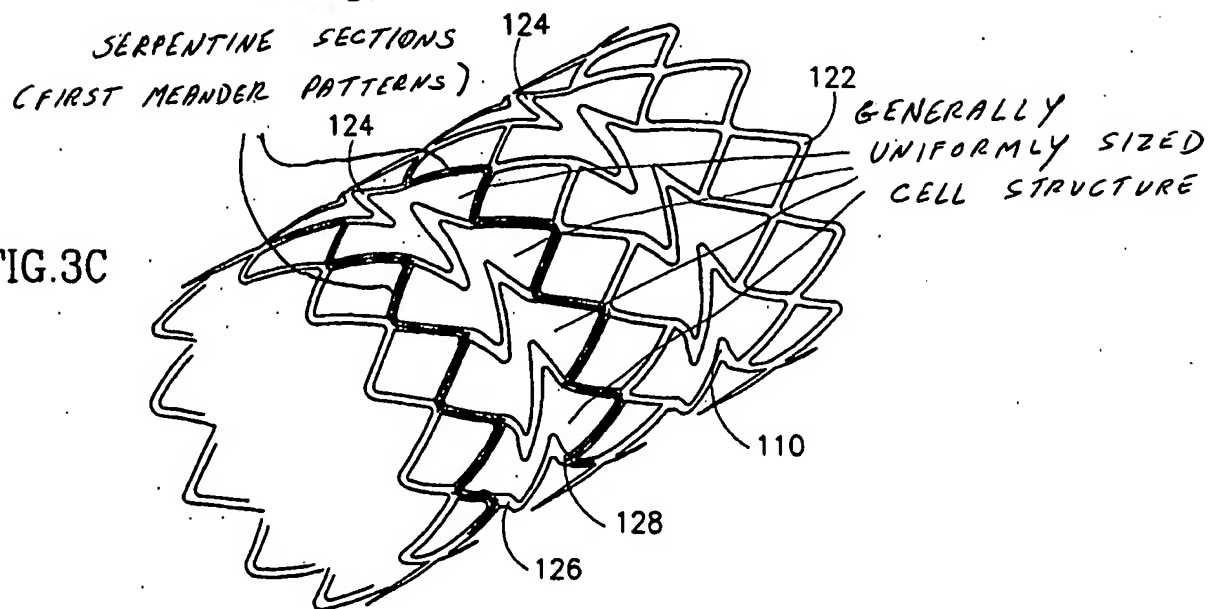


FIG.3C



APPENDIX B

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5,449,373

FIG. 3A

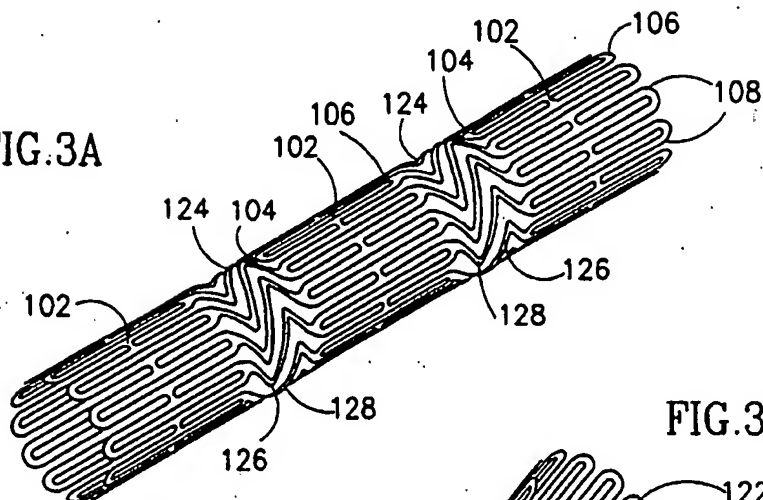


FIG. 3B

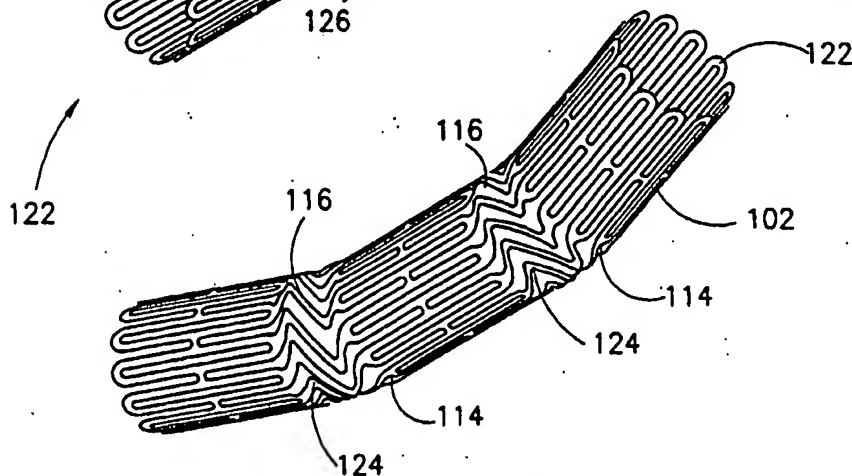


FIG. 3C

